

The Impact Reform of the Staff Regulations in Making the Commission a More Modern and Efficient Organisation: An Insider's Perspective

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*"The perspective of insiders in the Kinnock Cabinet"**

The slow path of reform before the fall of the Santer Commission

The European Commission is an administratively well-established organisation, starting as it did in 1957 with the involvement of just six Member States and now looking towards its fifth accession wave in May 2004, which will take it to 25 Member States. Unlike most domestic administrations the Commission has grown massively both in terms of size and responsibilities over the past five decades. The volume of financial transactions in which the Commission has been involved, for example, increased from a few thousand per year in the 1960s, to 60,000 by the late 1980s, to 620,000 by the late 1990s, and now easily surpasses 1,000,000 transactions per year. However, despite the scale of change, the Commission's organisational systems underwent very few changes over the years, and human resource policies, developed in the 1950s and 1960s for a much smaller institution, hardly altered.

The early period of the Commission was characterised by a tight, centralised administration under the strong leadership of Secretary General Emile Noël. Mr Noël began his three-decade reign with just 3,000 staff (a fraction of today's level), highly motivated individuals driven by a certain genius idealism required to establish the fledgling operation. The human resources system was based largely on the French civil service system, which required high entry standards and then conducted career progression on the basis of seniority.

The growth of the administration continued relatively unevaluated until 1979 and the publication of the Spierenburg Report, the first major review of the internal workings of the Commission. Ambassador Spierenburg was asked by the Jenkins Commission to lead a team of independent experts studying the organisational structure, activities and employment resources of the Commission. The report recommended streamlining the organisation, identifying the lack of a management culture and little merit-motivation as causes for concern. The subsequent changes focussed on reform of DG structures, portfolios and organogrammes rather than on radical changes to the human resources regime. Commissioner Henning Christophersen**, in his role as Vice President for Personnel and Administration, attempted a structural modernisation programme in 1985, but this too failed to have a fundamental impact.

It was not until the Santer Commission that reform was again given its appropriate prominence, with the

publication of 'Tomorrow's Commission' in April 1998. This established the Sound and Efficient Management 2000 (SEM) reforms (first launched in 1995) and the Modernisation of Administration and Personnel Policy 2000 (MAP) as the financial management and personnel lynchpins for radical administrative reform. Most relevant was part III of the report 'What role for Commission officials?' which paved the way for a genuine discussion on the Staff Regulations. For the first time the link between the Commission's tasks and resources available was thoroughly analysed. Rather than focussing simply on the modernisation of structures, the Commission sought to evaluate the management skills possessed by its workforce, and ultimately address the alteration of the career structure along merit lines.

Those making the first, tentative and sensitive steps towards a possible reform of the Staff Regulations, such as Commissioner Liikanen, were nearly blown off course by the leaking of the confidential Caston Report and its subsequent publication by the Commission in April 1998. The suggestions that the career structure should be simplified to reduce the four existing staff categories to two and to the introduction of the merit principle were poorly received by staff unions. The inevitable consequence of the mis-communication and apparent secrecy was a well-attended strike later that month. In an attempt to bring staff on board the Director General, David Williamson, was tasked with consulting widely with staff and unions on the way forward through his 'Reflection Group on Personnel Policy'. The Williamson Report, published in November 1998, still did not rule out the possibility that the Staff Regulations could be amended, although the bulk of the suggestions focussed on reform that could be internally executed, such as greater training and more concours. One official summed up his approach as "if it ain't broke don't fix it"; however, his fresh view was widely appreciated. Complementing this spirit of openness on reform, the Commission made efforts to publicise a 'screening' procedure known by its French acronym DECODE, or 'Designing Tomorrow's Commission,' to take stock of the operation of all its DGs and Services (which later reported in May 1999).

The new landscape of reform following the fall of the Santer Commission

A momentum of positive dialogue on reform was beginning to build, with the recognition from all sides (staff, Commissioners, the Council and unions) that

there was a need for a modernisation of the Commission's human resources policy. However, the landscape changed entirely with the European Parliament's decision in December 1998 not to discharge the 1996 budget, calling for a Committee of Independent Experts (CIE) to look into various infamous allegations against the Commission – now widely known by the catch-all phrase 'the Cresson affair'. With the publication of the 'First Report on Allegations regarding Fraud, Mismanagement and Nepotism in the European Commission' from the Committee of Independent Experts on 15th March 1999 the death knell of the Santer Commission sounded and the Commission fell. A caretaker Commission sat in place until the autumn, at which time the CIE's second report was published. Not only did the report conclude that there was a "displacement of responsibility" with regard to the ex-ante controls and internal audit function within DGs, it also recommended a deep modernisation of staffing policy, including the formal introduction of the merit principle.

The new Commission wasted no time in seizing the opportunity and embracing the mandate. Just four days after the publication of the second CIE report, on 14th September 1999, a 'Task Force for Administrative Reform' was entrusted with generating the policy building blocks of a proposed White Paper on reform. Soon after, on 16th November, the Commission adopted what it called a number of 'Strategic Orientations' for reform, and then published its 'Strategic Options Paper' on reform the next month. Vice President Kinnock, now Commissioner for Administration and Reform under the new Commission, proposed a three-pronged strategy for reform. It would cover: i) prioritisation and allocation of resources; ii) audit financial management and control; and iii) human resources. Priority setting included the sensible introduction of modern Activity Based Budgeting (ABB) and a review of where the Commission could best externalise its activities and where it should concentrate resources on core tasks. The aims of the reform of Audit, Management and Control were to protect the financial interests of the Union, for example, by overhauling internal audit practices and improving financial control by clearly defining responsibilities of authorising officers and line managers. These are both substantial elements of the ongoing reform and, in the light of the Eurostat affair, remain high profile. This article focuses on the third dimension – the reform of human resources. Here the aims were to ensure: that the Commission builds an appropriately trained workforce; that career development becomes based on merit; and that the rights and obligations of staff are clear and the business reflects the modern social and ethical context in which it is conducted. These considerations would, it was suggested, require changes to the Staff Regulations.

Once these principles were established the ball of far-reaching reform was set in motion. A consultative document was adopted the following January, and the College adopted the White Paper on 1st March 2000, only around six months after the new Commission its task force had been set to work. The human resources

elements of reform were now clearly spelt out, and topics covered in detail ranged from revised discipline and whistle-blowing procedures to a more linear career structure. Consultation with other Institutions such as the Council and Parliament (so far four Parliamentary reports have been devoted to the subject) followed, and the Commission set about gathering best practice examples from other organisations and Member States. The next step came with the drafting of the consultation paper, published in October 2000. The Commission then proceeded to undertake a massive round of consultations with staff and unions – a communication effort never before witnessed in the Commission. In February 2001 the Commission adopted a series of decisions on human resources policy that did not require the consent of other Institutions, and this led to the later submission to Council under the Spanish Presidency of the proposal to amend the Staff Regulations in April 2002. The Commission has since reached a crucial stage in the amendment of the Staff Regulations with political agreement on the proposed package of reform being reached at the General Affairs Council in May 2003. This political agreement was preceded by relatively poorly attended industrial action as the unions attempted to lobby both the Council and the Commission on the package being proposed.

It is from this point – following political agreement and prior to the envisaged entering into force of the new Regulations on 1st May 2004 – that we in this paper will consider the possible impacts of the reform of the Staff Regulations.

The Impact of Reform: Career deal, pay, promotion & appraisal

At the heart of "the reform" lies the modernisation of human resources towards a performance-based career system – the simple notion that advancement, reward and respect stem firstly from proven merit and not just seniority or experience. Acceptance of this concept, particularly its implications for clear and objective appraisal, represents a significant modernising shift for the Commission.

It is worth noting that many of the benefits of the new career system could have been accessed under the original statut, and reform of the staff regulations was not therefore explicitly necessary. But Kinnock's team were keen for the Commission to demonstrate its ambition. For them, it was not just about changing the legal mechanics, it was about cultural change and to deliver that would require the radical break of a new statut.

A linear Career structure – of sorts

The original career system was introduced in 1962 and reflected what was then the traditional civil service structure in many Member States, a structure which itself had dated back for centuries. It divided staff into four categories (A to D), each with up to eight grades. Each grade had eight steps, and automatically officials moved up one step (with an accompanying salary increase) every two years.

A typical fault of this system was that staff would

often face career bottlenecks. The tendency was for officials to reach the highest grade they could reasonably expect to achieve (A4, B1, C1 or D1) at around 50 years of age, assuming they did not join the European Civil Service very late in their careers. After that they could look forward to an automatic increase in step every two years over a maximum of sixteen years. With promotion improbable and an automatic system of rewards effectively regardless of performance, the organisation failed to provide these staff with the right incentives to ensure they remained motivated.

A related problem of this rigid career structure was that it was very difficult to move between categories – an official was often effectively branded as say a C grade on entry and that was that. A culture with parallels, as one senior official put it, to the Grandes Academies, which relied on ensuring that recruitment deliberately selected the best, and the need for monitoring and measurement of performance was deemed either inefficient, ineffective or unnecessary¹. Yet in an age of life-long learning and where the investment in and development of staff is not just expected it is demanded such a rigid structure appears outdated. Moreover, the advance of IT has made the traditional categories C and D largely superfluous and, the Commission itself argues, “today’s staff in these categories are much more highly qualified than their predecessors were 30 years ago”².

So a new, more continuous, career structure was designed, based on two basic categories: administrator (“AD”) equivalent to the old A grade, and assistant (“AST”) replacing categories B and C; category D would be phased out. Alongside the categories is a linear grading system for all staff ranging from one to sixteen. Assistants can be at grades 1-11 and administrators grades 5-16. With less steps in each grade and faster mean progress anticipated through the grades, the system is genuinely more continuous and removes many of the automatic bottlenecks of the old system. The outcome should be that an official recruited at a low grade in the new system can, through proven merit, reach a much higher level of pay and responsibility than under the old. The knock-on incentives for lifelong learning and personal development are tangible.

What this radical reform has not done is create a totally linear system. However great the level of recognised merit by assistants in order to become an administrator, they will need to pass an oral and written examination; furthermore the number of such progressions is limited to a maximum of 20% of newly appointed AD officials each year. For one official this bottleneck was “important so as not to create the impression that academic education has no significance anymore”. For the less conservative, including VP Kinnock, there appear regrets that the system was not fully linear:

“I would have made the system fully linear top to bottom, instead of having this linear-ish half and half system, which represents a massive stride forward. But I would have liked the job completed. Why couldn't we have a fully linear system? Because of the innate and immovable conservatism of the

system, that isn't an excuse it's a reason. That meant they could not envisage the idea that someone could come in at 21 as a secretary and by the age of 47 be a director. There is absolutely no reason in the world logically why that couldn't happen, with someone that is very diligent, immensely hard working, prepared to qualify with an external degree ...I just wanted a system that could accommodate that for reasons of institutionality.”

Rewarded on Merit – pay under the new system

The new career system does, however, concretely reward merit through the new pay system. The New Pay Structure (Table 1) represents not just a simplified linear pay scale compared to the old structure (Table 2), but creates financial incentives for excellent performance ahead of time served. At no stage under the new system is an individual paid less after being promoted, as the highest step (5) of any grade is paid no more than the first step of the next highest grade. Under the old system it was different – for example an A6 official on step 4 of seniority in that grade received more than an official at step 1 of the higher grade A5. By step 8 of this scale the differences were even more extreme – a C3 official in step 8 would actually earn more than an official starting at C1, two grades his senior.

The clear incentive of the new pay structure is to gain promotion, and to be promoted as rapidly as possible given that the earlier you are promoted the greater your pay rise. As such the new system encourages better performance and aligns pay rewards with the prestige and demands of higher grades. A clear stride forward.

In the negotiations building up to May 19th 2003 General Affairs Council, where political agreement for reform of the Staff Regulations was agreed, much focus was devoted to rewards, but the pay system was not the most controversial. Perhaps partly because those holding the purse strings in the Council would not want to oppose a system that encouraged a better performing European Civil Service. The issues that proved more high-profile and controversial were reform of “the Method”³ and especially reform of pensions. In the context of the need for reform of many Member States’ pension regimes, it was unsurprising that several Member States wished to see some equivalent movement from the European Civil Service’s pension system – they after all provided two-thirds of the funding for this. Whilst these decisions may have grabbed the headlines, beyond perhaps encouraging so-called active ageing, the concessions were more about achieving political agreement than any fundamental modernisation of the Staff Regulations.

A New system of appraisal

Central to a career system that rewards demonstrated merit is an objective appraisal system. Without a fair and respected method for appraising performance the progress in reforming the career system would be undermined. Yet the existing system needed to be improved to achieve this. One official characterised the

Table 1: The New Pay Structure (euros per month)

Grade	Step				
	1	2	3	4	5
16	13 917.93	14 502.78	15 112.21		
15	12 301.13	12 818.04	13 356.67	13 728.27	13 917.93
14	10 872.14	11 329.00	11 805.06	12 133.50	12 301.13
13	9 609.16	10 012.95	10 433.70	10 723.99	10 872.14
12	8 492.89	8 849.77	9 221.65	9 478.21	9 609.16
11	7 506.29	7 821.72	8 150.40	8 377.16	8 492.89
10	6 634.31	6 913.09	7 203.59	7 404.01	7 506.29
9	5 863.62	6 110.02	6 366.77	6 543.90	6 634.31
8	5 182.46	5 400.24	5 627.16	5 783.72	5 863.62
7	4 580.43	4 772.91	4 973.47	5 111.84	5 182.46
6	4 048.34	4 218.45	4 395.72	4 518.01	4 580.43
5	3 578.05	3 728.41	3 885.08	3 993.17	4 048.34
4	3 162.40	3 295.29	3 433.76	3 529.29	3 578.05
3	2 795.03	2 912.48	3 034.87	3 119.31	3 162.40
2	2 470.34	2 574.15	2 682.32	2 756.95	2 795.03
1	2 183.37	2 275.12	2 370.72	2 436.68	2 470.34

prevailing reality:

“We are in a world where you are all permanent officials, since you can't fire people. In the old system you just sat there and didn't work anymore, which is bad because work is put on the high performers whilst the others are sitting there. When it came to appraisal there was normally no real differentiation.”

The new staff appraisal system, known as the Career Development Review (CDR), sets to change this culture and provide proper appraisal. A starting point for this is the introduction of job descriptions for everyone – many officials simply did not have one under the old system. Under the CDR, each individual is assessed against 3 criteria: performance relative to objectives; demonstration of abilities; and conduct. Each year, after a full reporting process involving performance review discussions, a number of merit points (up to a total of 20) are awarded to each member of staff. These points accumulate over time and when a certain threshold is reached, promotion is secured. The process also identifies agreed objectives and training needs for the coming year. A target average of 14/20 is set for each Directorate General (DG) so as to ensure consistency between DGs; this should also avoid automatic “merit point inflation” (where everyone is given high marks) as high scores will need to be offset by low scores.

The CDR sets out an improved process for dealing with inadequate performance. The new system's application is actually outside the Staff Regulations and has not yet been finalised. It is likely to provide a support system to allow re-training, alternative posts and other support to those staff identified as underperforming. The ambition at a political level is to replace “the Byzantine old system” of dealing with incompetence, which placed such enormous burdens on managers

that only one member of staff has ever been formally sacked by the Commission for poor performance – on that occasion it took over 9 years to end legal debate which went all the way to the European Court of Justice, and where both sides were funded by the European Union.

On paper the CDR process should be commended as a clear improvement – formal reporting structures ensure real engagement on the management chain; objectives and performance can more objectively and clearly measured; and the early identification of inadequate performance is supported. It is perhaps questionable that all DGs should have the same target average for merit points – it is not improbable that some DGs (e.g. DG Relex) may be perceived as more glamorous and therefore attract greater competition for posts and higher quality staff than some other DGs, yet the total number of points distributed cannot be systematically higher. But whether it is a success in reality will not be clear for at least a decade. The introduction of the performance review system will challenge the Commission's internal culture and successful cultural change will be a long-term process.

A major challenge for the Commission will be entrenching a culture of promotion based on merit whilst the nationality of senior officials remains both a politically important issue and an explicit factor in senior personnel decisions. Whilst, it is true that no geographical quotas exist, geographical balance is important and high-level political lobbying from Member States is far from unheard of. More positively, reform is countering the establishment of national fiefdoms, as staff can normally only be in a post for a maximum of 5 years. But so long as Member States view senior posts in the Commission as advantageous, fully embedding a meritocratic system both in perception and reality will be troublesome.

Table 2: The Old Pay Structure (figures from 2001 presentation)

Grades	STEPS/ECHELONS							
	1	2	3	4	5	6	7	8
CAT. A	A1	11492,16	12102,64	12713,12	13323,60	13934,08	14544,56	
	A2	10198,34	10780,87	11363,40	11945,93	12528,46	13110,99	
	A3	8446,08	8955,63	9465,18	9974,73	10484,28	10993,83	11503,38
	A4	7095,60	7493,32	7891,04	8288,76	8686,48	9084,20	9481,92
	A5	5849,97	6196,54	6543,11	6889,68	7236,25	7582,82	7929,39
	A6	5055,47	5331,30	5607,13	5882,96	6158,79	6434,62	6710,45
	A7	4351,74	4568,27	4784,80	5001,33	5217,86	5434,39	
	A8	3848,72	4003,93					
CAT. B	B1	5055,47	5331,30	5607,13	5882,96	6158,79	6434,62	6710,45
	B2	4380,18	4585,53	4790,88	4996,23	5201,58	5406,93	5612,28
	B3	3674,05	3844,80	4015,55	4186,30	4357,05	4527,80	4698,55
	B4	3177,73	3325,81	3473,89	3621,97	3770,05	3918,13	4066,21
	B5	2840,47	2960,30	3080,13	3199,96			
CAT. C	C1	3241,15	3371,85	3502,55	3633,25	3763,95	3894,65	4025,35
	C2	2819,12	2938,89	3058,66	3178,43	3298,20	3417,97	3537,74
	C3	2629,71	2732,33	2834,95	2937,57	3040,19	3142,81	3245,43
	C4	2376,14	2472,39	2568,64	2664,89	2761,14	2857,39	2953,64
	C5	2190,95	2280,73	2370,51	2460,29			
CAT. D	D1	2476,10	2584,37	2692,64	2800,91	2909,18	3017,45	3125,72
	D2	2257,73	2353,89	2450,05	2546,21	2642,37	2738,53	2834,69
	D3	2101,35	2191,29	2281,23	2371,17	2461,11	2551,05	2640,99
	D4	1981,29	2062,54	2143,79	2225,04			

A Modern employer

One of the main goals of Neil Kinnock's reform of the Staff Regulations is to drag the Commission into the 21st Century by turning the Institution into a truly modern employer. Due to historical inertia surrounding personnel reform in the Commission little regard had been paid previously to the need to reflect contemporary expectations – and even morals – in the HR policy. The Commission was not seen as particularly supportive of 'family-friendly' working practices and incentives, for example. Neither was it considered to have a clear and transparent whistle-blowing policy, as the deficiencies of the handling of Schmidt-Brown, Andreasen and Van Buitenen's cases tended to highlight, if only in the eyes of the media. It was a startling contradiction that the Commission appeared not to want to take it's own medicine that it was happy to dole out to Member States, particularly in terms of equality policy – an unconscious double standard, it seemed to observers. As such, the Commission decided to drive forward a policy position heavily based on the principle of explicitly stated rights and responsibilities for employees. Such modernisation was seen as an essential requirement to ensure that the highest calibre of staff could continue to be recruited and retained. Although the Staff Regulations were negotiated as a package during the rounds of Group Statut, Coreper, and the General Affairs Council, these parts of the package generally faced relatively little resistance or opposition, and were some of the quickest areas on which consensus was achieved (with some very specific exemptions mentioned below). The same can be said of their discussion in the reports so far of the European Parliament, thus indicating a broad welcoming of the principle of this modernisation of employment protections and obligations.

Here we discuss in further detail the three major elements that make up the 'modern employer' provisions of the revised Staff Regulations: whistle-blowing; family-friendly policies and allowances and equal opportunities policy.

Whistle-blowing: Protecting the official and the institution

An example of a policy that sits squarely under the 'rights and responsibilities' banner is that of whistle-blowing, where procedures were previously put in place in the Staff Regulations to allow officials of the Commission to raise serious matters of wrong-doing through defined channels, for their own protection and that of the Institution. Whilst many closely involved in this area within the Commission felt that the provisions on whistle-blowing in the Staff Regulations were well set out, it became apparent that many outside those circles did not have a grasp of the rules. This has led to a number of high profile cases – both of people who could easily be defined as whistle-blowers and so-called non-whistle-blowers – taking an explosive and unconventional course, often played out in full view of the world's media. Despite many of those involved in these high profile cases not being defined strictly as whistle-blowers (i.e. not raising concerns through official channels), there was a recognised ambiguity in the system. The Commission therefore laid out a number of revisions to the provisions on whistle-blowing, aimed at giving more and fully transparent lines of complaint to people raising concerns, and at the same time specifying the sanctions for those who damage the Commission by not following agreed procedures.

Whistle-blowing, according to one official, was one of the areas of 'modern employer' policy that saw the

most movement and negotiation at Group Statut level. Each Member State administration brought to the table their own codes on whistle-blowing, and these varied from total and unfiltered disclosure – including to the media – in some Nordic countries to more conservative approaches in southern Member States. Under the existing Regulations staff are allowed to report concerns to OLAF, the independent anti-fraud body, or to their own hierarchies, up to the level of Secretary General. The new proposal includes an option for staff to report concerns also to the President of other Institutions, such as the Court of Auditors, the European Parliament and the Council, or to the Ombudsman, if OLAF or the hierarchy fail to take appropriate action in a reasonable amount of time. This will effectively allow officials additional channels and a second bite at the cherry if they are concerned about how their complaint is being dealt with. Political actors have been keen to provide a channel for whistle-blowing which provides all involved with total security – both in terms of the employment status of the individual and for the Institution against unauthorised disclosure or false allegation – yet to also maintain a spirit of healthy and active debate about policies and procedures.

Family-friendly policies and allowances:

An emphasis on supporting the family unit

The second major plank of the ‘modern employer’ policy is that focussing on family-friendly work practices and allowances that are aimed at reflecting the moral and social climate of modern-day European societies. The original Staff Regulations had been drafted at a time when single-income families were the norm and the importance of work-life balance had not been recognised. With an increasingly diverse workforce the Commission needed to catch-up with practices that had already become well-established in many Member States, particularly those of part-time working and job-sharing. The revised Staff Regulations propose new rights for staff to work part-time if they have children under the age of nine or if they have responsibilities caring for a sick or disabled dependent. Officials will also have the right to work reduced hours (minimum 80 per cent) if they have children between nine and twelve years of age. For those aged between 55 and 60 the right to work part-time will be awarded regardless of dependants. Officials choosing to work part-time will also be able to opt to keep their full-time pension contributions, although this will not be an option for job-sharers. Previously any staff member would only be granted half-time rights in exceptional circumstances, and only after an official application in writing had been submitted.

Long-overdue catching up was also required in the area of maternity and paternity leave. Whilst many Member States had long since introduced generous maternity leave and pay and some paternity leave, the Commission had what could be described as only basic provision for its officials. Under the new Staff Regulations maternity leave on full pay will be increased from 16 to 20 weeks, with an increase to 24 weeks in the case of

multiple or premature births. Paternity leave will be increased to 10 days and adoptive leave of up to 20 weeks will be granted to staff with newly adopted children. Where the Commission attempted to go much further than many Member States is on the issue of parental leave, with the introduction of a total of six months’ partially paid leave during the first twelve years of childhood. Officials will receive a basic monthly allowance of EUR 1000 during the first three months and for the remaining three months they will receive EUR 750 plus social security, plus acquired non-contributory pension rights. Parents will also be able to opt for part-time working on this basis for twelve months, whereby the allowance is, of course, halved. Other forms of leave will also be introduced or extended in scope. For example, officials will be able to take up to nine months compassionate leave to look after sick relatives, under a similar allowances and social security system to that of parental leave. Special leave of up to five days to care for a seriously ill child will also be available, formalising what has previously been an informal entitlement in many parts of the Commission.

The allowance system, although not explicitly a function of family-friendly policy, can be mentioned in this context as the politically agreed reform of allowances does emphasise the role of the family. The allowances regime was debated at the political level (in Group Statut, Coreper and GAC levels) as part of the overall remuneration package, including the pensions regime and linearisation of the career structure (discussed in The Career deal, pay, promotion & appraisal). As such the great victory for the Commission was the retention of the expatriation allowance for officials (unchanged at 16 per cent). However, the decision to increase the dependent child allowance from EUR 237.38 to EUR 312.64 over a period of six years, together with the introduction of a pre-school allowance of EUR 76.37 per child and the reimbursement of school fees and transport costs, mark a shift towards supporting the family unit through the allowances system.

Equal opportunities policy: A step change in gender and sex-equality rights for officials

Some of the most progressive step changes in the proposed Staff Regulations in terms of becoming a modern employer concern an emboldening of the already well-established equal opportunity provisions. As with the whistle-blowing policy referred to above, the revised harassment policy that was agreed at the political level in May 2003 aims to protect the interests of staff with concerns about the way business is conducted in the Commission. The principles surrounding protection against harassment have long been in operation within the Commission; however, it was thought that by incorporating them into the Staff Regulations they would be given a firmer legal footing. Psychological and sexual harassment will now be defined and concomitantly prohibited by the revised Staff Regulations. Sexual harassment will be considered a form of discrimination – gender discrimination – and as such will come under

revised proposals to reverse the burden of proof (placing it on the employer) in cases of alleged discrimination. This burden of proof reversal will also apply more widely to any implementing aspect of the Staff Regulations. So, for example, if an employee were of the opinion that they had been passed over for promotion because of their gender the burden would fall on the employer to prove that there had been no breach of equal treatment provisions. This is consistent with practice in some Member States and much of the USA, but can still be considered a bold, pro-active move.

Perhaps the most striking and one of the more controversial proposed changes to the Staff Regulations is the suggestion that same-sex partnerships that do not have access to legal marriage in their respective Member States will be treated as if they were married couples. These couples will, therefore, have access to the same benefits and social security as married couples. This subject was hotly debated at Group Statut level, with opinion divided broadly along lines consistent with the religious make-up of various Member States, but with objections also being raised on a practical level by traditionally liberal Member States. How, for example, will non-marital couples be able to register their partnership if not at their Member State level? Will there be a qualifying period or other criteria? These and many other issues will be fleshed out when drafting the legal translation, and will involve negotiation with union representatives, the European Parliament and, ultimately, a second sign-off from the Council.

Internal motivation versus external triggers: what drove the reform of the Staff Regulations?

The course of events prior to the fall of the Santer Commission can arguably be characterised as an internal process of evolution of the need to reform the human resources policy of the European Commission. By the late 1990s the Commission as an organisation had grown into an unwieldy management system, with poorly defined – and motivated – career progression. The Staff Regulations, designed to govern, guide and protect a relatively small set of civil servants, were now somewhat *depassé*, failing to take into account the more complex management structures and, indeed, the social, ethical and moral requirements of the modern-day Commission. The Commission had been producing high quality policy for decades – groundbreaking work on Economic and Monetary Union, for example – but the organisation was highly functioning in spite of its structure, rather than because of it. It would be hyperbolic to portray the Institution as dysfunctional, but it was clear that successful policy tended to emerge from informal channels rather than due to any clear priority setting and management. Management itself was not regarded as an essential skill at that time, and training had no premium. What was needed was a change of culture, and it was believed that the only way to effect this cultural change was to initiate a structural, systemic change. With enlargement looming large around the corner the imperative for reform was clear.

The fall of the Santer Commission can be charac-

terised as an external trigger which instilled a greater sense of urgency in the newly blooming reform. Without the fall of the Commission the speed and the intensity of the reform effort would not have been so great, according to some officials' views. What the events of 1999 did was provide a mandate for root and branch reform, rather than piecemeal change, and this was made evident in the appointment of a Vice-President for reform, Neil Kinnock. Outside interest in the workings of the Commission was indeed stirred by the internal deficiencies of the last Commission's outdated customs, or "barnacles" as one Commissioner described them. However, the importance of this trigger should not be overplayed. Both at the official and political level opinion is firmly grounded in the fact that the motivation for reform (both of the Staff Regulations and more widely) was primarily internally generated and driven. As one political figure described it: "It was not a matter of clean-up - it was a matter of catch-up; the Commission is not fundamentally a dirty place." Moreover, it is widely believed within the Commission that had the events of 1999 not taken place the need for reform would have been just as acute, but instead with Member States taking the lead in calling for action. In sum, it could be argued that a groundswell of internal motivation was triggered and intensified by the fall of the Santer Commission and all that entailed.

Conclusions

Once finally agreed and fully implemented, the reform of the staff regulations should make the Commission both a better place to work and a more modern, efficient organisation. It can provide staff with more appropriate incentives to perform well both through a new system of rewards and the support of a more understanding "modern employer". These reforms will benefit the institution and, without meaning to being glib, the Member States and citizens of the European Union. More concretely the entire reform has been achieved at a net cost saving in excess of 1 billion Euros. This was both an impressive effort by the reformers, but one driven by the political necessity of successfully getting the agreement through the Council.

Current perceptions of winners and losers of the reform may be driven by the negotiations up to the May 2003 GAC. As discussed previously, the pensions question was inevitably raised in this political negotiation. Yes, the Council secured some financial concessions, but on balance the staff, including future staff to be recruited under the new system, will benefit greatly from the reform package. The pensions issue prompted what were relatively poorly attended strikes and in truth the Unions remained peripheral to the negotiating process – one official speculated that they were expecting to be asked to step in and negotiate directly with the Council as was witnessed during the Delors Commission, when the method was secured. If so, that was hopelessly naive.

Could the reform have gone further?

That the reform of the Staff Regulations will make the

Commission more modern and efficient is difficult to dispute, the toughest question is whether it should have gone further? The most obvious area is not establishing a fully linear Career, as well as pay, structure and this is regretted by Vice President Kinnock. Were the Commission right to keep the elitist Concours admission system? The conclusion at official level was that if “it ain’t broke don’t fix it” and moreover the recruitment system was perceived as promoting high standards. The more radical alternative of a promotion to post system was considered by officials, but was thought to require a very reliable system for getting jobs and perhaps is not have been consistent with the challenges of the Commission’s unique multi-cultural environment. The continuation of the expatriation allowance in a modern, global workplace has also to be questioned. The potential list of missed opportunities goes on.

It is crucial to remember, as any reformer will relate, including those at an official and political level in the Commission, that reform is not an event it is a process. And whilst it is only sensible that an organisation that has gone through a serious period of introspection and reform is careful not to get too self-obsessed, it is most

likely that the process of modernisation is a continuing phenomenon.

NOTES

* Editors’ Note: Mr N. Kinnock has been awarded EIPA’s Alexis de Tocqueville Prize 2003, which will be presented to him on 11 December 2003 in Maastricht, see pp. 43-44.

** Editors’ Note: Mr Henning Christophersen is the Chairman of EIPA’s Board of Governors.

¹ The Commission has decided to stick with one element of this approach, the Concours system, and rightly argues that a system ensuring high quality of recruitment can only be to the benefit of the organisation.

² “An Administration at the Service of half a billion Europeans”

³ Since 1981 the salaries of EU officials have been adjusted annually in line with changes in the purchasing power of remuneration of the Member States’ public services in accordance with a legally binding formula which is known as the ‘Method’. As part of the agreement it is to be legally incorporated into the new staff regulations. □

EIPA’s Alexis de Tocqueville Prize 2003 has been awarded to Rt. Hon. Neil KINNOCK, Vice-President of the European Commission and Prof. Geert BOUCKAERT, Professor at the Public Management Institute, Catholic University of Leuven. The award ceremony will be held in Maastricht on 11 December 2003.



Rt. Hon. Neil KINNOCK



Professor Geert BOUCKAERT